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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/098,689  | 03/15/2002  | Alex Mashinsky       | 4330-4003US1        | 5184             |
| 7590  | 06/10/2005  |                      | EXAMINER            |                  |
| ALEX MASHINSKY<br>245 WEST 72ND. STREET<br>SUITE 7D<br>NEW YORK, NY 10023 |             |                      | ABDI, KAMBIZ        |                  |
|   |             | ART UNIT             | PAPER NUMBER        | 3621             |

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/098,689             | MASHINSKY, ALEX     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Kambiz Abdi            | 3621                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 March 2001.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

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**DETAILED ACTION**

1. Claims 1-4 have been examined.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,005,926 to Alexander Mashinsky.

4. As per claims 1 and 3, Mashinsky clearly teaches the method and apparatus for monitoring and reporting performance information relating to data transmission, comprising:

Receiving an electronic data transmission addressed to a network service provider (See Mashinsky column 2, lines 16-30 and 44-48, column column 3, lines 60-68);

Routing the data transmission to the network service provider (See Mashinsky column 4, lines 9-37);

Monitoring a portion of the data transmission (See Mashinsky column 5, lines 57-64, column 7, lines 5-8, column 8, lines 47-65, and column 19, lines 7-16);

Generating performance information associated with the data transmission (See Mashinsky column 5, lines 57-64, column 7, lines 5-8, column 8, lines 47-65, and column 19, lines 7-16);; and

Reporting the performance information to a third party (See Mashinsky column 5, lines 57-64, column 7, lines 5-8, column 8, lines 47-65, and column 19, lines 7-16).

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5. As per claims 2 and 4, Mashinsky teaches all the limitations of claims 1 and 3, further Mashinsky teaches,

Storing the performance information in database (See Mashinsky column 5, lines 28-35, column 6, line7-column 7, line 8).

6. Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

*Conclusion*

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the examiner should be directed to **Kambiz Abdi** whose telephone number is **(571) 272-6702**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **James Trammell** can be reached at **(571) 272-6712**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see

<http://portal.uspto.gov/external/portal/pair>

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to:

**(703) 305-7687 [Official communications; including After Final communications labeled "Box AF"]**

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**(703) 308-1396 [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]**

Hand delivered responses should be brought to the Examiner in the

**Knox Building, 50 Dulany St. Alexandria, VA.**

**Kambiz Abdi**  
Examiner

A handwritten signature in black ink, appearing to read "Kambiz Abdi".

**June 8, 2005**